UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/896,390	06/29/2001	Arturo A. Rodriguez	A-7258	1010

5642 7590 01/25/2007

SCIENTIFIC-ATLANTA, INC.
INTELLECTUAL PROPERTY DEPARTMENT
5030 SUGARLOAF PARKWAY
LAWRENCEVILLE, GA 30044

EXAMINER
VAN HANDEL, MICHAEL P

ART UNIT	PAPER NUMBER
2623	

NOTIFICATION DATE	DELIVERY MODE
01/25/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOmail@sciatl.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/896,390	Applicant(s) RODRIGUEZ ET AL.	
	Examiner Michael Van Handel	Art Unit 2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 11.

Regarding claim 1, the applicant argues that Hassell et al. fails to disclose a processor configured with memory to determine a type of portable medium for storing downloaded first recordable media content, the type of portable medium corresponding to a media type of the first recordable media content. Specifically, the applicant argues that the claimed feature that "determine(s) a type of portable medium for storing the downloaded first recordable media content, the type of portable medium corresponding to a media type of the first recordable media content" is not the same as a user issuing commands that the program guide implements. The examiner respectfully disagrees. As stated in the Office Action mailed 10/23/2006, Hassell et al. discloses allowing a user to transfer data between storage devices through a user interface (p. 8, 9, paragraphs 81-83, 85-87, 89, 90, 98, 99). Despite the user involvement in issuing commands through the user interface, it is the program guide that implements them. Thus, the examiner concludes that the processor of Hassell et al. is configured to perform the claimed function. The applicant further states that this is simply not the same as a system that receives a command to store downloaded files and then determines (without user intervention) which type of removable medium is to be used to store the downloaded files; however, the examiner notes that "without user intervention" is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As further stated in the Office Action mailed 10/23/2006, Hassell et al. discloses a program guide that gathers information from the currently loaded digital storage medium, such as the estimated time remaining on the storage medium, volume name of the currently loaded volume, etc. (p. 4, paragraphs 43, 44 & Fig. 7a). The program guide also indicates which of the selections currently selected for recording will fit on the currently loaded storage medium (p. 5, paragraph 47). The examiner maintains that this functionality also meets the limitation of a processor configured to "determine a type of portable medium for storing the downloaded first recordable media content, the type of portable medium corresponding to a media type of the first recordable media content," as currently claimed.

As still further stated in the Office Action mailed 10/23/2006, Hassell et al. discloses that a user may transfer programs stored on digital storage device 49 to other volumes of digital storage device 49 or to secondary storage device 47 (p. 8, paragraph 81). The program guide then transfers the programs and associated data (if possible) in an appropriate format to secondary program data storage device 47. Transferring the data associated with a program may not be possible with some analog secondary storage devices, so the program guide accordingly ignores the associated data transfer (p. 8, paragraph 83). Since the program guide deems the digitally stored program to be suitable for conversion and storage, wheras the associated data is not, the examiner concludes that this functionality also meets the limitation of a processor configured to "determine a type of portable medium for storing the downloaded first recordable media content, the type of portable medium corresponding to a media type of the first recordable media content," as currently claimed.

Regarding claim 18, the applicant argues that the distribution of content from a server to a single client through an exclusive network session is not notoriously well-known in the art, as asserted by the examiner's Official Notice. The examiner respectfully disagrees. In further support of the assertion, the examiner directs the applicant to the previously cited LaJoie et al. reference. LaJoie et al. discloses transmitting programs to a subscriber's set-top terminal in the form of a unicast (unicast is the sending of information packets to a single destination see http://www.dictionary.com encyclopedia definition of unicast) transmission (col. 9, l. 43-52), Thus, the examiner maintains that it is notoriously well-known in the art to send media content from a server to a user through an exclusive network session, as previously asserted.